ZONING BOARD OF APPEALS 25 Green Street IPSWICH, MASSACHUSETTS

Approved 6.18.15 Distributed 6.25.15

> Meeting Minutes May 21, 2015

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members, the Ipswich Zoning Board of Appeals held a meeting on Thursday May 21, 2015 at 7:30 p.m. at the Town Hall, in room A. Board Members Chairman Robert Gambale, Roger LeBlanc, Benjamin Fierro, Lewis Vlahos, William Page and Associate Member Robert Tragert attended. Administrative Assistant Marie Rodgers was also present.

Citizen Queries: There were none.

Public Hearings:

70 Central Street, Cumberland Farms, Inc. requests a **Variance** pursuant to Sections XI.K and VIII, C, 4 to allow the existing LED pump topper signs. Chairman Gamble read the legal notice and opened the public hearing at 7:35 p.m. In a letter dated March 5, 2015 Ms. Parker requested to continue the hearing from March 19, 2015 to the April 16, 2015 meeting. In a letter dated April 15, 2015 Ms. Parker requested to continue the hearing from April 16, 2015 to the May 21, 2015 meeting. (hereby incorporated by reference)

Carolyn Parker was present representing Cumberland Farms; the Petition was in response to the Building Inspectors violation Notice and Order for 70 Central Street and 66 Turnpike Road, dated February 4, 2015.

Ms. Parker indicated that the Board's decision would be applied to the Turnpike Road store as well.

Ms. Parker described the modifications to the existing LED price sign and explained the smart pay program. The pump toppers would be replaced with a new six inch alternator strip which allows the prices to change from smart pay members to non-member price.

Ms. Parker then reviewed the Variance criteria outlined in a document titled <u>Variance Criteria for 70 Central Street</u>, <u>Ipswich, MA</u> (hereby incorporated by reference).

Lengthy discussion took place between the Board and the Petitioner. The Board reviewed the criteria for the granting of a variance as set forth in G.L. c. 40A, §10 and noted that illuminated changeable signs are prohibited under the Ipswich Protective Zoning Bylaw without a variance.

The Board found that the petition failed to demonstrate that due to circumstances relating to the soil conditions, shape, or topography of the Petitioner's land or structures and especially affecting such land or structures, but not affecting generally the zoning district, a literal enforcement of the prohibition on illuminated changeable signs would involve a substantial hardship, financial or otherwise to the Petitioner.

The Petitioner asked for a bifurcated vote. The Board established that the non-changing LED signs would be allowed to remain on the free standing sign and pump toppers.

Chairman closed the public hearing; the Board discussed the definition of signs per the bylaw.

MOTION:

Mr. Fierro moved that the Board deny the Variance request by the Petitioner by provision set forth in Sections VIII, C, 4 with respect to illuminated signs, changing, and intermittent signs. Mr. Page seconded. The motion passed unanimously. Gambale, yes; LeBlanc yes; Vlahos, yes; Page, yes.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: Petition and associated documentation; BI violation notice dated 2.4.201; photo of existing signage, smart pay toppers, photo of existing dispenser and proposed dispenser.

5 Leslie Road Map 27C Lot 012C; **Shad Webber** requests a **Special Permit** pursuant to Sections XI-J and IX.J for an Accessory Apartment. Chairman Gamble read the legal notice and opened the public hearing. The 900 sf apartment would be above the proposed garage. The lot size is 2.45 acres; the left side yard setback would be reduced by 40-feet from 125' to 85' and the rear yard reduced by 25'-feet 150' to 125'. The Petitioner is working with the BOH for a new septic system installation. Layout and architectural concept plans were submitted. (hereby incorporated by reference) the proposed entry door would be from the front side of the house, the exit egress would be out to the rear deck.

Discussion ensued regarding the entry door (currently, the plan shows the second egress door leads to the rear of the house). The building code does not allow a second egress to intervening spaces. The Petitioner acknowledged compliance, and changed the entry off the rear porch rather than inside the mudroom; he then signed the first floor plan (A-1.1) Webber Residence, Ipswich, MA (hereby incorporated by reference)

The Chairman explained an accessory apartment is an allowable use and read the seventeen conditions, to which the Petitioner agreed.

As there were no other comments from abutters or others the Mr. Fierro moved to close the public hearing, Mr. Vlahos seconded. The motion passed unanimously.

MOTION:

Mr. Fierro moved the Board grant the Petitioner request for a Special Permit for an Accessory Apartment pursuant to Sections IX-J and XI-J of the Ipswich Protective Zoning Bylaw, relative to work as shown on plans titled Webber Residence dated 4/12/2015 as modified on A-1.1 this evening for the accessory apartment to be built over the garage, on the north east side of the building. Mr. Page seconded, the motion passed unanimously.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: Petition and associated documentation.

439 Linebrook Road Map 37C Lot 027; Robert McHugh requests a Variance and/or Special Permit under Sections XI.J and XI.K and VI.B to sub-divide a lot and reduce the sideline setbacks from 40' to 20'no more than 50% of the requirement.

Chairman Gamble read the legal notice and opened the public hearing. Larry Graham H.L. Graham Inc. represented the Petitioners. He explained the proposal is the same as the one that the Board approved and issued a decision dated June of 2006; granting relief to reduce the side line setback from 40' to 20' to the existing greenhouse to divide the property. The Special Permit was never exercised and has lapsed. The one acre lot would be created from sub-dividing the 4.19-acre lot; the only revision made was updating the existing conditions.

Chairman Gambale questioned a condition in the 2006 special permit for an infiltration system and discussion ensued. The Planning Board endorsed an ANR plan that carried the notes regarding the infiltration system; but it was never recorded.

Mr. LeBlanc initiated discussion arguing that the special permit has been exercised by the approval of the ANR plan; lot is not created until the ANR is recorded, but it can be recorded at any time. Discussion was held regarding procedures. Mr. Graham expressed his fears that an issue may arise, at a future time, with a title examiner and he would have to return to request set back relief again.

Chairman Gambale read a letter from abutters at 439 Linebrook Road, Jess Wrobel and Dave Carpenter (hereby incorporated by reference) with respect to flooding concerns from future development.

Discussion took place regarding flooding concerns, drainage and topography. Mr. Graham spoke to his efforts with the Conservation Commission.

John Souza 441 Linebrook Road initiated discussion concerning the original subdivision. Specifically, the lot line flares out at each end, (near the street) and the new plan shows straight lines. Mr. Graham noted that Mr. Souza's plan was not recorded and discussed the deed recorded 1963. Mr. Graham assured the Board that conflicts can be resolved. The Board noted that relative to relief sought in relations to the Petitioner proposal no impact to the abutter on the westerly side. Mr. Souza will contact Mr. Graham to discuss his concerns.

Mr. LeBlanc opined that the special permit has been exercised; he hypothesized that, if the ANR plan is ignored, it is all one lot, to divide the lot would be creating self-imposed hardship, because then, it requires a Variance.

The Board suggested the Petitioner consult an attorney to determine that the threshold has been met and special permit exercised with the act of recording the ANR.

Mr. Graham requested to continue the public hearing until June 18, 2015, to allow parties opportunity to sort out the plans.

The Board continued at the request of the Petitioner, to June 18, 2015; same place, same time. In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: Petition and associated documentation. Opposition e-mail dated Thursday, May 21, 2015 from Jess Wrobel and Dave Carpenter, 412 Linebrook Rd.

3 Cayer Way; Map 37C, Lot 036; **Shawn and Carrie Cayer** requests a **Special Permit** pursuant to Sections XI.J and VI-B and F Table of Dimensional and Density Regulations to construct an Accessory Structure (barn) larger than 750 square feet (2,040 s.f.). Chairman Gamble read the legal notice and opened the public hearing.

Mathew Cummings, Cummings Architects 87 Central Street, Ipswich, MA was present to represent the Petitioners, who were present as well. The Proposed accessory structure will be 34' X 60'

Mr. Cummings submitted a statement of support signed by twelve neighbors (hereby incorporated by reference) he spoke to the history of the family-owned property and it agricultural past where a barn once existed. He explained that the Petitioners need for extra room for additional parking and storage. The loft would be used for seasonal storage, electrical service would be underground, and the only plumbing will be a faucet. He discussed other barns in the neighborhood.

Mr. Cummings spoke to the location of the lot; the lot contains 131,745 square feet; the front setback will be 50-feet, the rear yard setback will be 95-feet; the right side setback will be reduced to 20-feet.

Mr. LeBlanc initiated discussion regarding accessory structures, he cited the Bylaw section VI Dimensional and Density Regulations- Frontage Exception for Larger Lots d. table for accessory structure setback requires 50', same as principal structure; both principal and accessory to be 50' X50% or 75' for front setback, the accessory structure cannot be closer to the front set back than the primary structure on the lot. The accessory structure will have to be located behind the 75-foot setback.

The Board discussed conditions to prevent future owners turning the loft into a living space, no bathroom would be such a condition; a cold water spigot only, would be allowed.

Mr. Cummings spoke to the reasons for the size of barn structure, the location and sighting considerations. Mr. Cummings requested to continue the public hearing to the the next regularly scheduled meeting, to allow discussion of relocating the barn behind the 75-foot mark.

The hearing was continued at the request of the Petitioner, to June 18, 2015; Room A, at 7:30 p.m. to provide additional information regarding the location of the barn with respect to the front setbacks, the location of driveway shown on the plan, drainage plan, proposed parking, additional lighting.

The hearing was continued at the request of the Petitioner, to June 18, 2015; Room A, at 7:30 p.m.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: Petition and associated documentation

4 Emery Lane; Map 30C, Lot 79; **Mary Smith** requests two **Special Permits** pursuant to Footnote 2., Section VI Table of Dimensional & Density Regulations and XI-J to reduce the front yard setback by 10% from the required 50-feet to 45-feet and to reduce left side set back by 25% from the required 40-feet to 30-feet; and a **Variance** from Section III and IX.J from the requirement that not more than 30% of the lot area is wetlands at ZBA member Bill Page recused himself and left the room.

Chairman Gamble read the legal notice and opened the public hearing. The Petitioner was present represented by local developer Carl Gardner. Mr. Gardner explained the history of the lot and proposed development. Surrounding wetlands are an issue for locating the house. He referenced a letter from the Petitioner/Owner requesting withdrawal of the Variance request because a recent wetlands survey determined that the percentage of wetlands falls well below the 30% maximum of lot area limitation.

At one time the Petitioner owned both properties, she lived there before Emery Lane existed; the subdivision created four lots and she and her husband bought the lot behind theirs. When she split up with her husband, he sold joint ownership of the lot to her.

The Declaration of Protective Covenants for Emery Lane requires any new home must be approved by a majority of the property owners. Also, they must approve the five-foot reduction of the front set back. The covenant also requires a two car garage to be included in the plans. The Petitioners proposal is pending approval from the Covenants.

Mr. Gardner reviewed the proposal the area is completely wooded and the proposed dingle family house would be very little impact on the neighborhood. The lot is serviced by town water and natural gas main. A Notice of Intent will be filed with the Conservation Commission for an Order of Conditions. Due to the wetlands on the property the house would have to be shifted south east direction, locating the house 30-feet to the left side yard setback, a reduction of ten-feet and reduce the front set back to 45-feet, a reduction of five-feet. Mr. Gardner contended that 11-feet already exist creating a significant buffer; 5-feet would be barely noticeable.

The Board determined that it is a conforming lot, but meets the threshold criteria for a special permit, under foot note 2 specifically, shallow and narrow, because of the restricted building area.

Chairman opened the hearing to public comments. **Tim McCarthy 6 Emery Lane** indicated that after the neighbors reviewed the plans they feel the house is too big. He could put a smaller house on the property. He needs relief from the Conservation Commission and The Declaration of Protective Covenants. **Michelle McCarthy** spoke in opposition and complained Mr. Gardner was not responsive to their concerns. The Chairman noted that the Board's approval would only be for the footprint of the house, if changes were proposed he would have to come back for modification of the decision.

Todd Smith 7 Emery Lane questioned the process and complained the proposed house is too close to the street. **Carol Conway 19 Pineswamp Road** indicated that it is her lot that the house would be ten-feet closer to and that she has no problem with that.

As there were no other comments from abutters or others the Mr. Gambale moved to close the public hearing, Mr. Fierro seconded. The motion passed unanimously.

The Board discussed the special permit criteria and found the lot qualifies for a special permit

MOTION:

Mr. Fierro that the Board grant the Special Permit as requested by the Petitioner from the Provisions of the Protective Zoning Bylaw, sections VI Table of Dimensional & Density Regulations, specifically Footnote 2 and XI-J to reduce the front yard setback from the required 50-feet to 45-feet and to reduce left side set back to no less than 30-feet as shown on plan prepared for Carl Gardner dated May 5, 2015 by County Land Surveys, Inc. Mr. Tragert seconded the motion.

Discussion was held regarding the private covenants; reduction of five feet is diminius and the left side setback has little impact on the abutter, as she voiced her support.

The motion passed with a roll call vote of four to one; Mr. Gambale, no; Mr. Fierro, yes; Mr. LeBlanc, yes; Mr. Vlahos, yes; Mr. Tragert, Yes.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: Petition and associated documentation; letter from Mary L. Smith dated 5.13.2015; topographic plan of land located at 4 Emery Lane dated May 5, 2015; three pages floor plans and house design.

The permits, if granted will stipulate that all of area counts and setbacks have been met. If the counts are found to be incorrect, then the permit granted shall become null and void.

Approval of Minutes -

Mr. Gambale moved to approve meeting minutes of 2.12.2015 and 3.19.2015 as submitted. Mr. Fierro seconded, the motion passed unanimously. (2.12.2015 and 3.19.2015 meeting minutes hereby incorporated by reference)

Adjourn - As there was no further business, the Board unanimously voted to adjourn at 11:47 p.m.

Respectfully submitted, Marie Rodgers Administrative Assistant

These minutes were approved by the Board on June 18, 2015.